IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 680 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Appellant(s)
Versus
PRABHUDAS KISHOREDAS TOBACCO PRODUCTS LTD. - Opponent(s)

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Appearance :
MR MANISH R BHATT for Appellant(s) : 1,
MS VAIBHAVI PARIKH with MR SN SOPARKAR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 31/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. The instant appeal filed under Section 260A of the Income-tax Act, 1961 is admitted on the following substantial question of law:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was

right in law in holding that the assessee is entitled to deduction under Sections 80HH, 80HHA and 80I of the Income-tax Act, 1961 ?”

2. The assessee company is engaged in the business of manufacturing Bidis by using tobacco, tendu leaves and other raw-materials. The brand name of the bidi is Telephone Bidi. In the course of assessment for the assessment year 1991-92, the assessee claimed deductions under Sections 80HH, 80HHA and 80I of the Income-tax Act, 1961 (“the Act”, for short). The Assessing Officer took the view that the activity carried on by the assessee did not constitute an industrial undertaking within the meaning of the provisions of the Act. According to the Assessing Officer, the assessee company was merely buying tendu leaves and tobacco which raw-materials were, thereafter, given to contract workers who in turn were rolling bidis for the assessee and as the assessee was not possessing any plant or machinery, it was not an industrial undertaking within the meaning of the Act. In view of these conclusions, the Assessing Officer denied the claim made by the assessee.

3. The assessee carried the matter in appeal before the Commissioner (Appeals). The Commissioner (Appeals) relied

upon decision of the Allahabad High Court in **COMMISSIONER OF INCOME-TAX, AGRA VS. MUBARAKALI KHAN & OTHERS**, (1980) 123 ITR 101 and held that the activity carried on by the assessee was a manufacturing activity and therefore, the assessee was entitled to relief both under Sections 80HH and 80I of the Act. The revenue carried the matter in appeal before the Tribunal. The Tribunal noticed that the issue raised before it was squarely covered in favour of the assessee by various decisions of the Tribunal including one rendered in the case of the assessee for the assessment years 1984-85 and 1985-86 in ITA Nos.2868 & 2869/Ahd/1988 and held that the assessee was entitled to relief under Sections 80HH, 80HHA and 80I of the Act.

4. Feeling aggrieved, the revenue has filed instant appeal under Section 260A of the Act which is admitted on the substantial question of law referred to earlier. This Court has heard Mrs.M.M.Bhatt, learned counsel for the appellant and Ms.Vaibhavi Parikh, learned counsel appearing for Mr.S.N.Soparkar, learned senior advocate of the assessee in detail and at length. From the facts of the case it is evident that the decision rendered by the Tribunal in ITA Nos.2868 & 2869/Ahd/1988 for the assessment years 1984-85 and 1985-86 in the case of the

assessee was subject matter of Reference being Income Tax Reference No.99 of 1995. This is also quite evident from the averments made by the appellant in paragraph No.1(B) of the memorandum of appeal. In Income Tax Reference No.99 of 1995, the Division Bench of this Court has opined by judgment dated February 2, 2006 that the assessee company was an industrial undertaking engaged in the business of manufacturing bidis. Following the principle laid down in Income Tax Reference No.99 of 1995, this Court is of the opinion that on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee is entitled to deduction under Sections 80HH, 80HHA and 80I of the Act. The appeal, therefore, fails and is dismissed. There shall be no order as to costs.

(J.M.PANCHAL, J.)

(BANKIM N.MEHTA, J.)

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